

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1976

No. 76-856

SOUTHERN CONCRETE COMPANY,
Petitioner,

VS.

UNITED STATES STEEL CORPORATION,
Respondent.

**REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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Supreme Court, U. S.

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Petitioner, Southern Concrete Company, submits this Reply to the Brief for Respondent United States Steel Corporation in Opposition to Petition for a Writ of Certiorari.

Rather than address and meet the important issues presented by the Fifth Circuit's decision, United States Steel's brief in opposition to Southern Concrete's petition attempts to obfuscate them by asserting that Southern Concrete has failed to comply with

Rule 56(e) of the Federal Rules of Civil Procedure in that it:

"failed to offer any evidence to support its allegations of either 'injury' from or 'causal relationship' to the violations alleged in its opposition to respondent's motion under Rule 56, Fed. R. Civ. P."

(Brief in Opposition at 2).

This statement is not true. On the contrary Southern Concrete offered very specific and detailed evidence in the form of the Affidavit of Walter Dobbins, President of Southern Concrete. (Appendix on Appeal before the Fifth Circuit Court of Appeals pp. 167-184). Respondent's motion to strike this affidavit was denied (Petitioner's Appendix p. 51).

In this affidavit Mr. Dobbins specifically stated that because of United States Steel's deep pocket and the vast sums of money made available to Williams Brothers, Southern Concrete's direct competitor, Williams Brothers had a competitive advantage over other readi-mix producers including Southern Concrete. Specific advantages were detailed: lower cash outflow, lower interest costs, greater ability to hire more salesmen and greater ability to acquire equipment which reduced the cost of freight and cement.

With these advantages of lower cost and lower cash flow requirements, Williams Brothers, as the affidavit shows, built readi-mix plants in the vicinity of Southern's plants, was able to become the market price leader and used these advantages to cut the price of readi-mix to eliminate other readi-mix producers. The

affidavit states that as a result of Williams Brothers' competitive advantages Southern's market share dropped from 15% to 5% and in 1969, when Williams Brothers cut the price of readi-mix to a point equal to the prevailing price ten years before, Southern was forced out of business.

This evidence was certainly sufficient to require the Trial Court, in accordance with the teachings of this Court to submit the issue of causation to the jury. As this Court has often noted, the issue of causation is generally for the jury.

"We think the jury should be allowed to determine whether Respondents' conduct materially contributed to the failure of the Imperial venture, to Continental's damage." *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 702 (1962).

"If there is sufficient evidence in the record to support an inference of causation, the ultimate conclusion as to what that evidence proves is for the jury." *Perkins v. Standard Oil*, 395 U.S. 642, 648 (1968).

It was only by adopting an unduly restrictive rule of causation that the lower courts were able to withdraw this important issue from the jury.

CONCLUSION

Petitioner Southern Concrete prays that this Court consider the important issues presented by the decision below and grant a writ of certiorari to determine

whether, as a matter of law, deep pocket suppliers, of puppet companies created through the use of illegal credit tying are to be immunized from suit by injured local competitors of the puppet company by the use of arbitrary and inconsistent rules of standing.

Dated, January 27, 1977.

Respectfully submitted,

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